

**BEFORE THE
DEPARTMENT OF INTERIOR
MINERAL MANAGEMENT SERVICE**

Open and Nondiscriminatory Movement of)	
Oil and Gas as Required by the Outer)	RIN 1010-AD17
Continental Shelf Lands Act)	

COMMENTS OF SHELL PIPELINE COMPANY LP

Shell Pipeline Company LP (“SPLC”), respectfully submits these Comments in response to the Notice of Proposed Rulemaking issued by the Mineral Management Service (“MMS”) in the above-referenced proceeding.¹ SPLC is the owner and operator of pipeline systems in the Gulf of Mexico and focuses these Comments solely on the application of the proposed rules to pipelines that transport crude oil. SPLC previously filed comments in response to the 2004 Advance Notice of Proposed Rulemaking,² which also addressed only oil pipelines. SPLC supports the regulations proposed by MMS in the Notice of Proposed Rulemaking (“NOPR”) as well-balanced regulations that take into account the long history of successful industry operations on the Outer Continental Shelf (“OCS”) under a light-handed regulatory regime.

I. INTRODUCTION AND OVERVIEW

Under Section 5(f) of the Outer Continental Shelf Lands Act, 43 U.S.C. § 1334(f), (“OCSLA”) every pipeline granted a permit, license, easement, or right-of-way to transport oil or gas on or across the OCS is required to provide open and nondiscriminatory access to both owner and nonowner shippers. Oil pipelines have transported crude oil from the OCS for decades and

¹ *Open and Non-Discriminatory Movement of Oil and Gas as Required by the Outer Continental Shelf Lands Act*, 72 Fed. Reg. 17047 (April 6, 2007) (“NOPR”).

² *The Open and Non-Discriminatory Movement of Oil and Gas as Required by the Outer Continental Shelf Lands Act*, 69 Fed. Reg. 19137 (April 12, 2004).

it was long assumed that these pipelines were subject to regulation by the Federal Energy Regulatory Commission (“FERC”) (and before that the Interstate Commerce Commission) under the light-handed form of regulation applied to oil pipelines onshore. It was not until the decision of the U.S. Court of Appeals for the D.C. Circuit in *The Williams Companies v. FERC*, 345 F. 3d 910 (D.C. Cir. 2003), that it became clear the FERC had no jurisdiction to regulate pipelines under the OCSLA. Nonetheless, in the long history of oil pipeline transportation from the OCS, there has never been any indication of a need for regulatory measures beyond the light-handed, complaint-based type of regulation applied to oil pipeline operations onshore. Therefore, the MMS proposal to establish informal and formal dispute resolution procedures, in the event they are needed, is a reasonable and appropriate regulatory approach. This is particularly so given the lack of evidence of a need for any form of economic regulation of oil pipeline transportation from the OCS.

Given the history of OCS oil pipelines, in which shippers and carriers have traditionally been able to resolve disputes through informal negotiation, providing several informal dispute resolution options under MMS auspices is entirely reasonable. The FERC Hotline process has worked well for oil pipelines onshore. Since the NOPR proposes, quite appropriately, to apply a reasonableness standard to evaluate whether the open access and nondiscrimination obligations have been satisfied, it will be important for the staff of the MMS Hotline, outside the context of a particular dispute, to become familiar with the normal and standard characteristics and practices of oil pipelines, in order to have a frame of reference in which to evaluate disputed positions. SPLC encourages MMS to engage in informal outreach sessions with oil pipelines, shippers, producers and refiners in which MMS Hotline staff can become familiar with technical and standard practices. SPLC would be pleased to participate in any such sessions.

It is not clear from the NOPR or the language of the proposed regulations whether the MMS Hotline procedures can be invoked by an oil pipeline or only by a potential complainant. The FERC Hotline is available to anyone, not just a complainant, and can serve as a resource for a pipeline to obtain informal staff advice. SPLC recommends that MMS make its Hotline available for all market participants, to use as a resource to obtain informal advice and guidance.

The exception made for FERC pipelines is also reasonable because the FERC already has in place a regulatory scheme that ensures nondiscriminatory access to transportation and a well-established dispute resolution process. It would be inefficient to subject those pipelines to two separate but overlapping regulatory processes.

As the NOPR recognizes, it is appropriate to require a filing fee for formal complaints to deter the filing of frivolous complaints, particularly in light of the alternative informal resolution options that are provided. Any entity that has the financial capacity to engage in the business of producing, shipping, processing or trading crude oil produced from the OCS certainly will have the financial capacity to pay the proposed filing fee, or even the higher fee justified by the MMS analysis set forth in the NOPR.³ Therefore, there is simply no need to provide a provision for fee waivers or reductions. Such a provision is out of keeping with the nature of the business entities that might have any need for, or make use of, the complaint procedures proposed in the NOPR.

II. COMMENTS ON THE SPECIFIC QUESTIONS RAISED

In this section SPLC addresses specific questions raised in the NOPR. To the extent a question is not addressed, it is because SPLC supports the proposal as drafted for the reasons advanced by MMS in the NOPR.

³ NOPR, 72 Fed. Reg. at 17052-53.

Whether MMS should use a formal complaint resolution method other than that proposed.

The formal complaint procedure proposed reasonably balances the need for formal procedures to resolve the few disputes that may arise which cannot be resolved through informal means and the absence of evidence suggesting that undue discrimination or a failure to obtain access to transportation have been a historical problem on the OCS. In the public conferences following the Advance Notice of Proposed Rulemaking, MMS staff consistently asked whether there was a problem and no commenter was able to present evidence that a problem existed. Therefore, more elaborate formal procedures, such as administrative hearings, would be out of proportion to the need.

Whether MMS should impose a time limit on the filing of complaints.

SPLC supports the creation of time limits on the filing of complaints for the same reason that statutes of limitations exist. Over time memories fade and evidence grows stale. Moreover, if a shipper has an issue, it should be raised and resolved promptly. In most cases, the carrier and the shipper will have attempted to resolve any dispute informally either under the informal dispute resolution procedures proposed in these rules or independently. If a dispute cannot be resolved through informal means, and the shipper wants to invoke the formal procedures, the complaint should be filed within a defined period of time to avoid a prolonged period of dispute and to ensure that relevant evidence is available and maintained. Under Section 16(3) of the Interstate Commerce Act, which governs oil pipelines onshore, a complaint that is not based on overcharges must be filed within two years from the time the cause of action accrues. A longer time should not be permitted for a complaint concerning off-shore transportation.

Whether the proposed processing fees will materially affect the filing of complaints and whether the value of using the complaint process to complainants, transporters, and others of using the complaint process is fairly presented.

Filing fees are entirely appropriate and necessary to deter frivolous formal complaints, particularly since MMS has proposed to make agency supervised informal dispute resolution available as an alternative without a fee. Proposing fee waivers or reductions are out of keeping with the nature of the entities that would be in a position to use a complaint procedure. It is not clear who MMS envisions would need this option. The likely potential complainants under the proposed rules are the Producers or the Shippers of oil from the OCS. These are the entities that are likely to need access to transportation on crude oil pipelines from the OCS and each will have the financial capacity to pay the proposed fee.

Producers on the OCS, at a minimum, need to have the financial capability to meet the MMS bond requirements which are significantly greater than the proposed complaint filing fee, so the proposed filing fee should not be a hardship for them. Shippers, who are often not the Producers, buy oil at the platform and transport it to a market center or a refinery, and need to have the financial capacity to meet the standard oil pipeline tariff requirements for minimum tenders and line fill. Crude oil pipelines need a certain amount of the crude to remain in the pipeline in order to provide the transportation. The standard industry practice for crude oil pipelines, and reflected in the tariffs, is to require each shipper to provide a proportional share of the crude needed to operate the pipeline. This means that a shipper must have the financial ability to make the investment necessary to commit a certain number of barrels to remain in the pipeline until the shipper terminates its shipments. In short, any entity that does not have the financial capacity to pay the proposed complaint filing fee is also unlikely to have the financial

capacity to be able to engage in the business of producing, shipping or trading crude oil from the OCS. Proposed Section 291.109 should be eliminated from the final rules.

Whether MMS should obtain information from persons who are not parties to a complaint.

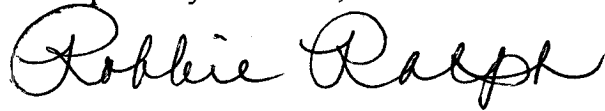
The NOPR proposes that MMS will have the option, in a particular case, to obtain information from nonparties. Obtaining information from nonparties as the need arises on a case by case basis is appropriate, but this authority should be used sparingly. The parties to the complaint should have the incentive to provide all the information needed. SPLC agrees with the MMS assessment in the NOPR that it is in the pipeline's best interest to provide documentation refuting a shipper's allegations of discrimination.⁴ The MMS should use its authority to compel nonparties to provide information sparingly. A complainant should not be able to rely on the MMS to gather the information necessary to substantiate a complaint that is based merely on allegations with no credible factual supporting information. The MMS should establish some decisional threshold that a complainant must establish to substantiate a complaint before the MMS invokes its authority to obtain information from nonparties.

⁴ NOPR, 72 Fed. Reg. at 17054.

III. CONCLUSION

SPLC supports the balanced approach taken by the MMS in the NOPR as an appropriate regulatory response to the circumstances, in light of the history of oil pipeline transportation on the OCS. SPLC urges the MMS to eliminate proposed Section 291.109, under which the filing fee could be waived or reduced, but otherwise supports the regulations as proposed.

Respectfully submitted,

A handwritten signature in black ink, reading "Robbie Ralph". The signature is written in a cursive style with a large, looping "R" at the beginning and a stylized "Ralph" at the end.

Robbie Ralph, Director
Economic Regulation and Tariff Services
Shell Pipeline Company LP

June 5, 2007